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IN THE

Supreme Court of the United States

October Term, 1967.

No. 1264.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION and LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,

Petitioners,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

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PHILADELPHIA MARINE TRADE ASSOCIATION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

QUESTION PRESENTED:

Where, in a collective bargaining agreement between an employer association and a union there is a broad arbitration clause which requires that all disputes and grievances and all questions involving the interpretation of the agreement be referred to arbitration, and, where there was an admitted dispute involving the interpretation of the agreement which was not specifically excluded from the arbitration clause, did the Court below properly rule that this dispute should be processed by the parties under the arbitration clause of their contract?

STATUTE INVOLVED.

The Labor Management Relations Act, Section 203(d), 29 U. S. C. A. 173, and Section 301, 29 U. S. C. A. 185.

STATEMENT.

This case arose over a dispute between the parties as to whether frozen meat on pallets could be discharged from a vessel with two pallets to a draft or one pallet to a draft.

Petitioners took the position that only one pallet load should be discharged at a time. Respondent's position was that two pallet loads could be discharged where it was necessary to do so. There was no question as to the pallets being a new method of unloading. It was conceded that pallets have been in use in the Port of Philadelphia since World War II. The only question was whether one pallet could be placed on top of or alongside another pallet so that the two pallet loads could be taken out at the same time. Likewise, there was no suggestion that the two pallet load was to be the exclusive method of discharge. This method was used only occasionally depending upon the stowage of the cargo in the hold and other factors (18a, 76a-77a, 138a).

When this dispute arose on February 28, 1967, respondent offered to process it under the grievance and arbitration procedure of the contract between the parties. Petitioners refused to do so and the longshoremen walked off the job and left the vessel idle (11a, 116a). However, the next day the dispute was actually processed under the grievance and arbitration procedure but the Impartial Arbitrator resigned at the job site arbitration because of the absence of the President of Local 1291. At subsequent meetings between the parties, petitioners contended, based on their unilateral and ex-parte interpretation of the contract, that the dispute came under paragraph 13(d) of the contract and was not subject to arbitration.[1] Respondent contended that the dispute was actually covered by paragraphs 13(a) and

1. Paragraph 13(d) is set forth at (7a-8a).

(c) [2] of the contract and that it was subject to the arbitration clause.

There was, therefore, an admitted dispute as to the interpretation of the contract. Paragraph 28 [3] of the contract contained a broad arbitration clause which provided that "all disputes and grievances of any kind or nature whatsoever arising under the terms and conditions of this agreement and all questions involving the interpretation of this agreement . . ." were subject to arbitration. In very general terms, paragraph 28 excepted "disputes or grievances arising under the terms and conditions of paragraph 13(d)", but in a following section, paragraph 28 provided that:

> "Should the terms and conditions of this agreement fail to specifically provide for an issue in dispute, or should a provision of this agreement be the subject of disputed Interpretation, the Arbitrator shall consider port practice in resolving the issue before him." [4]

Respondent contended that whether the operation involved was covered by paragraphs 13(a) and (c) or 13(d) was a matter for the arbitrator to decide. Respondent submitted that this initial or threshold question was subject to arbitration under paragraph 28 because the agreement between the parties failed "to specifically provide for an

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2. Paragraph 13(a) and (c) are set forth at (7a).

3. Paragraph 28 is set forth at (8a-10a).

4. In addition, Paragraph 29 of the contract provided that:

"No steamship Company or Contracting Stevedore and no official, District Council or Local of the International Longshoremen's Association shall make any change in this agreement nor render any interpretation of any provision thereof which shall be binding on any of the parties hereto. A difference of opinion regarding the meaning of any provisions of this agreement, which cannot be amicably adjusted between the parties shall be adjusted in accordance with Article 28 hereof." (See Exhibit "A" to respondent's complaint.)

issue in dispute" and "a provision of this agreement (was) the subject of disputed interpretation". Respondent agreed that if the arbitrator decided that the operation was covered by paragraph 13(d), that it would then become a matter of negotiation between the parties.

In view of petitioners' refusal to arbitrate this matter, respondent filed its complaint under Section 301 of the Labor Management Relations Act, 29 U. S. C. A. § 185, to compel the submission of the dispute in issue to arbitration.

The District Court heard testimony from the respondent which showed that frozen meat was discharged two pallets to a draft from September, 1966, "right up until recently" (59a-60a); that television tubes have been discharged two pallets to a draft for the past four years (48a); that frozen fish has been discharged two pallets to a draft since 1965 (48a); that other cargo, such as fungicide, nails, white lead, and pipe fittings, has been handled two pallets to a draft since 1965 (63a-65a, 82a); and that wrapping paper has been handled in this manner since 1964 (65a) and tiles since 1965 (64a, 79a-80a).

However, the District Court ignored the broad scope of the arbitration clause. Instead of deciding the threshold question under paragraph 28, the Court erroneuosly became involved in interpreting paragraph 13(d) and deciding the merits of the dispute. On appeal, the Court of Appeals reversed the District Court and ruled that under the arbitration clause and the decisions of this Court, the dispute should have been referred to arbitration.

ARGUMENT.

There Was an Admitted Dispute Involving the Interpretation of the Collective Bargaining Agreement and Under the Arbitration Clause of That Agreement and the Decisions of This Court the Dispute Should Have Been Referred to Arbitration.

There can be no doubt that the dispute in issue involved an interpretation of various provisions of the collective bargaining agreement between the parties. Counsel for petitioners conceded this point and admitted that normally this issue "would fall under the arbitrator's jurisdiction." He said:

> "I may say that involved in this situation also is not merely the question of a disputed provision in the agreement as such, which normally would fall under the arbitrator's jurisdiction, but the very jurisdiction of the arbitrator himself is here involved, and in this respect I think the law is very clear that the arbitrator may not decide his own jurisdiction, but this is for the Court to decide." (23a)

However, the question of the arbitrator deciding his own jurisdiction was not involved in this case. Respondent admitted that the basic question as to whether the dispute was or was not subject to arbitration had to be decided initially by the District Court. Counsel for respondent stated:

> "We do not question the Court's jurisdiction here at all to decide whether or not it should be referred to the arbitrator; as a matter of fact, we are asking the Court to refer the dispute to the arbitrator." (20a)

The above statement completely refutes petitioners' assertion that respondent urged "that the question of arbitrability, itself, was to be decided by the arbitrator, and not by the Court" (Petition p. 5).

The decision of the Court below was in complete accord with the teachings of this Court. In the famous Steelworkers Trilogy cases, this Court made it unmistakably clear that a dispute such as is involved in this case should be referred to arbitration.

In *United Steelworkers v. Enterprise Corp.*, 363 U. S. 593, 4 L. Ed. 2d 1424, 80 S. Ct. 1358 (1960), this Court said:

> ". . . the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his . . ." (U. S. at 599, L. Ed. at 1429).

In *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, 4 L. Ed. 2d 1409, 80 S. Ct. 1347 (1960), this Court said:

> ". . . An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage . . ." (U. S. at 582-583, L. Ed. at 1417-1418).

> ". . . In the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, the exclusion clause is vague

and the arbitration clause quite broad. Since any attempt by a court to infer such a purpose necessarily comprehends the merits, the court should view with suspicion an attempt to persuade it to become entangled in the construction of the substantive provisions of a labor agreement, even through the back door of interpreting the arbitration clause, when the alternative is to utilize the services of an arbitrator . . ." (U. S. at 584-585, L. Ed. at 1419).

In *United Steelworkers v. American Manufacturing Co.*, 363 U. S. 564, 4 L. Ed. 2d 1403, 80 S. Ct. 1343 (1960), this Court stated categorically that in cases of this type, the District Courts "have no business weighing the merits of the grievance" and that the processing of even frivolous claims may have therapeutic values. There this Court said:

". . . The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for.

The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious. The processing of even frivolous claims may have therapeutic values

of which those who are not a part of the plant environment may be quite unaware . . ." (U. S. at 567-568; L. Ed. at 1407).

The decision of the Court below was based squarely on the above decisions of this Court. The language of this Court is so controlling that the Court below was compelled to reverse the District court which failed to apply properly these decisions.

Petitioners now contend that the Court below failed "to apply the real intent of the contract as agreed by employer's counsel at trial" (Petition p. 2). This argument is patently without merit. The decision of the Court below is exactly in accord with the real intent and meaning of the contract as explained by counsel for respondent at trial. Counsel's consistent position throughout the trial was summarized at the final argument as follows:

". . . I think the issue is still whether there is an arbitrable issue here. I would say that neither the union nor the employer can take the position arbitrarily that ships are to be knocked off and state that a particular operation comes under 13(d) and is therefore negotiable. As I pointed out before, if it is determined ultimately that this operation is covered under 13(d), and the arbitrator would so rule, there would be no question about it. The only issue that is involved here is whether this comes under 13(a), 13(c), or 13(d); and I would say to Your Honor that it is not for the union to take an arbitrary or unilateral position that it definitely comes under 13(d), and go and knock ships off and refuse to submit that issue to arbitration, because the parties have agreed to a very broad and all-inclusive type of arbitration clause, as Your Honor has mentioned, and under that clause it is very specific that if there is an issue which is not specifically provided for that it must be submitted to arbitration, or if there

is a dispute as to the subject of interpretation of the contract, that that must be referred to the arbitrator. And I would say that under the decisions of the Supreme Court that that is the law of the land." (148a-149a)

The decision of the Court below was also completely in accord with the federal national labor policy as contained in Section 203(d) of the Labor Management Relations Act, 1947, 61 Stat. 154, 29 U. S. C. A. § 173(d) [5] which favors the adjustment of disputes arising over the "interpretation of an existing collective bargaining agreement" by a "method agreed upon by the parties". See also *Sinclair Refining Co. v. Atkinson,* 370 U. S. 195, 8 L. Ed. 2d 440, 82 S. Ct. 1328 (1962), and *Wiley v. Livingston,* 376 U. S. 543, 11 L. Ed. 2d 898, 84 S. Ct. 909 (1964).

Respondent respectfully submits that an examination of the record in this case will show that the decision of the Court below was clearly correct; that there is no conflict of decision with this Court; and that there is no important question of Federal law requiring decision by this Court.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANCIS A. SCANLAN,
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Counsel for Respondent.

April, 1968

5. Section 203(d) of the Labor Management Relations Act, 1947, 61 Stat. 154, 29 U. S. C. A. § 173(d) provides, *inter alia,* that:

"Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. . . ."